

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DAVID BERGMAN, Individually and on)
Behalf of All Others Similarly Situated,)

Plaintiff,)

v.)

Case No. 5:17-cv-00852-HE

SOUTHWEST BANCORP INC., MARK)
W. FUNKE, RUSSELL W. TEUBNER,)
JAMES E. BERRY II, THOMAS D.)
BERRY, JOHN M. COHLMIA, DAVID S.)
CROCKETT, JR., STEVEN C. DAVIS,)
PATRICE DOUGLAS, JAMES M.)
JOHNSON, LARRY J. LANIE, JAMES M.)
MORRIS II, and KAYSE M. SHRUM,)
D.O.,)

Defendants.)

STIPULATION AND [PROPOSED] ORDER OF DISMISSAL

WHEREAS, on December 14, 2016, Southwest Bancorp Inc. (“Southwest”) announced that it had entered into an Agreement and Plan of Merger with Simmons First National Corporation (“Simmons”), by which Simmons would acquire all of the outstanding shares of Southwest in exchange for 0.3903 shares of Simmons common stock and \$5.11 in cash for each share of Southwest stock (the “Transaction”);

WHEREAS, on July 24, 2017, the board of directors of Southwest authorized the filing of a Form S-4 Registration Statement (the “S-4”) with the United States Securities and Exchange Commission (“SEC”);

WHEREAS, on August 9, 2017, plaintiff David Bergman (“Plaintiff”) filed a putative class action lawsuit alleging defendants violated Sections 14(a) and 20(a) of the

Securities Exchange Act of 1934 (the “Exchange Act”) in connection with the S-4, captioned: *Bergman v. Southwest Bancorp Inc., et al.*, Case No. 5:17-cv-00852-HE (the “Action”);

WHEREAS, on August 29, 2017, Amendment No. 1 to the S-4 was filed with the SEC, which contained additional information regarding the Transaction (“Supplemental Disclosures”) that addressed and mooted Plaintiff’s allegations;

WHEREAS, on October 17, 2017, the Southwest stockholder vote on the Transaction was held and the Transaction was approved;

WHEREAS, Plaintiff believes and contends that the Supplemental Disclosures were material and mooted the meritorious claims set forth in his complaint;

WHEREAS, Plaintiff asserts that the prosecution of the Action caused defendants to issue the Supplemental Disclosures and that Plaintiff’s counsel believe they have the right to seek and recover attorneys’ fees and expenses in connection with the purported common benefit provided to Southwest stockholders as a result of the filing of the Supplemental Disclosures;

WHEREAS, Plaintiff’s counsel have informed defendants that Plaintiff intends to petition the Court for such fees and expenses if his claim cannot be resolved through negotiations between counsel for Plaintiff and defendants (the “Fee and Expense Application”);

WHEREAS, defendants assert that the Supplemental Disclosures were not material or required to be made, deny that any claim in the Action is or was meritorious, and deny that they violated any law or engaged in any wrongdoing;

WHEREAS, the parties agree and respectfully request that this Court retain jurisdiction over the Action for the sole purpose of considering a prospective Fee and Expense Application in the event the parties are unable to reach an agreement and such an application becomes necessary;

WHEREAS, Defendants reserve the right to oppose, in whole or in part, any Fee and Expense Application;

WHEREAS, no class has been certified in this Action; and

WHEREAS, for the avoidance of doubt, no compensation in any form has passed directly or indirectly to Plaintiff or his attorneys and no promise, understanding, or agreement to give any such compensation has been made, nor have the parties had any discussions concerning the amount of any mootness fee;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys for the respective parties:

1. Plaintiff hereby voluntarily dismisses the Action, with prejudice to Plaintiff and without prejudice to all other members of the putative class.

2. Because the dismissal is without prejudice as to the putative class, and no consideration or compensation has been given or promised to Plaintiff or his counsel and no class has been certified, no notice of this dismissal is required.

3. The Court retains continuing jurisdiction of the Action solely for purposes of further proceedings related to the adjudication of the Fee and Expense Application, if such an application becomes necessary. If the parties are unable to reach agreement, they will ask the Court to set a stipulated briefing and hearing schedule for the potential Fee and

Expense Application. If the parties reach an agreement concerning the Fee and Expense Application, they will notify the Court. Upon such notification, the Court will close the Action.

4. This Stipulation is entered without prejudice to any right, position, claim, or defense any party may assert with respect to the Fee and Expense Application, which includes the defendants' right to oppose the Fee and Expense Application in its entirety if such an application is filed.

JONES GOTCHER

MCAFEE & TAFT

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Attorneys for Plaintiff David Bergman

Attorney for Defendants

Dated: October 19, 2017

SO ORDERED this ____ day of _____, 2017.

UNITED STATES DISTRICT JUDGE